Supreme Court, U.S.
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No. 05-1253

IN THE
SUPREME COURT OF THE UNITED STATES
October 2005 term

CARL A. GEE,
Petitioner,
vs.
UNITED STATES OF AMERICA,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

At what point do funds originating with the federal government pass beyond the point permitting reliance upon or prosecution for a violation Title 18, U.S.C. § 666 ?

Lower courts in this case have said never.

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In the
Supreme Court of the
United States

October 2005 Term

CARL A. GEE,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

Petition for Writ of Certiorari

Opinion Below

The opinion of the United States Court of Appeals for the Seventh Circuit Is Reported at *United States of America v. Carl A. Gee*, 432 f. 3d 713 (7th cir. 2005) The Seventh Circuit affirmed the June 23rd Decision and Order of the United States District Court of for the Eastern District of Wisconsin in District Court Case # 02-CR-210. *See* Appendices A-B.

Jurisdictional Statement

This petition seeks review of a decision of the United States Court of Appeals for the Seventh Circuit. That decision was rendered on December 23, 2005. This Court's jurisdiction is invoked under 28 U.S.C. §1254(1).

Statutory Provisions Involved

See appropriate Appendix section.

Statement of the Case

On November 19, 2003, a grand jury sitting in the Eastern District of Wisconsin returned an indictment against Gary R. George. This two count indictment alleged in count one that George had conspired with others

"(a) to commit offenses involving federal program funds under Title 18, U.S.C. §666; and (b) to commit mail and wire fraud offenses, in violation of Title 18, U.S.C. §§1341, 1343, and 1346." This conspiracy was alleged to have violated Title 18, U.S.C. §371.

Count two of the indictment alleged that Georg had conspired with others to obtain

"...kickbacks from legal fees paid by the Police Athletic League, in violation of Title 18, U.S.C. §§666(a)(1)(B), 1341 and 1346." This count alleged that George's activities and those of his co-conspirators violated Title 18, U.S.C. §371.

On January 6, 2004, a grand jury sitting in the Eastern District of Wisconsin returned a superseding indictment alleging the two con-

spiracies set forth in the original indictment and three additional substantive counts. Count three of the superseding indictment alleged that Gary George knowingly and intentionally misapplied property of the Police Athletic League by rigging the bidding process with respect to a construction project in violation of Title 18, U.S.C. §666(a)(1)(A) and (2). Count four alleged that Gary George had corruptly solicited and accepted $2,500 intending to be rewarded in connection with a State of Wisconsin transaction having a value in excess of $5,000. This activity was alleged to have violated Title 18, U.S.C. §666(a)(1)(B). Finally, count five of the superseding indictment alleged that Gary George conducted a financial transaction using the proceeds of unlawful activity in violation of Title 18, U.S.C. §1956(a)(1)(B)(I).

On January 22, 2004, a plea agreement was filed and a change of plea hearing for George was conducted before the Honorable Rudolph T. Randa, Chief United States District Judge.

George was sentenced by the District Court on August 5, 2004 after a sentencing hearing conducted on August 4th and 5th.

On March 16, 2004, a second superseding indictment was returned by a grand jury. This indictment charged the Petitioner, Carl A. Gee with having conspired with Gary R. George, Mark E. Sostarich and others known and unknown to the grand jury to

"(a) commit offenses involving federal program funds under

Title 18, U.S.C. §666; and (b) to commit mail and wire fraud offenses in violation of Title 18, U.S.C. §§1341, 1343, and 1346." These activities were alleged in the indictment to have violated Title 18, U.S.C. §371.

On April 9, 2004, the Petitioner appeared for arraignment before Magistrate Judge William E. Callahan, Jr. A not-guilty plea to the single count of the indictment was entered.

On August 16, 204, the Petitioner appeared for trial before the Honorable Rudolph T. Randa, Chief United States District Judge, for a jury trial. Jury selection was commenced and completed on August 16, 2004. On August 19, 2004, the jury returned a verdict of guilty with respect to the sole count of the indictment.

On September 20, 2004, the Petitioner filed a Motion pursuant to Rule 29, F. R. Cr P. seeking relief from the verdict. On October 15, 2004, the District Court entered an Order denying the Petitioner's Motion for Judgment of Acquittal.

On January 25, 2005, the District Court sentenced the Petitioner to the custody of the Bureau of Prisons for a term of 24 months. The Court also ordered three years of supervised release and the payment of a special assessment of $100. The Court also ordered that the Petitioner pay $473,415.48 in restitution.

The Petitioner filed a Notice of Appeal to the United States Court of Appeals for the Seventh Circuit on September 2, 2005. On

December 23, 2005, the Court of Appeals affirmed the Judgment of Conviction.

Statement of Facts

Between October 1, 1997 and September 17, 2003, the time frame of the conspiracy alleged in the indictment, Gary R. George was a State Senator in Wisconsin. Mark Sostarich was a lawyer licensed to practice in the State of Wisconsin. Carl A. Gee, the Petitioner, was President and Chief Executive Officer of O.I.C.

O.I.C. in Milwaukee was a part of an international organization of affiliated members founded in 1967 by Reverend Leon Sullivan, an African American, who promulgated a set of guidelines intended to facilitate affirmative action through community involvement. O.I.C. in Milwaukee was a community development corporation involved in housing, education, and employment training. Originally a single focused employment training entity, O.I.C. expanded, diversified, and created affiliated organizations to address particular problems.

O.I.C. over the course of time had multiple contracts with the State of Wisconsin to administer the State's W-2 program. W-2 was a welfare reform program created by State of Wisconsin officials. Petitioner was president and chief executive officer of O.I.C. from 1972 until shortly after his conviction. During the Petitioner's presidency, O.I.C. was involved in the development of inner city housing, as well as the development of commercial projects within the inner

city. The organization also was involved in remedial education projects, daycare facilities, and youth activity opportunities.

In 1997 Attorney Sostarich was approached by Senator George and advised that Inner City Redevelopment Corporation (ICRC) a subsidiary of O.I.C. needed legal counsel to assist in the development of a scattered site low income housing project. George advised Sostarich that I.C.R.C. was seeking new counsel who could provide legal services more economically than the organizations present counsel was providing.

Sostarich, identifying himself as a member of the Milwaukee law firm of Petrie & Stocking, contacted J. Allen Stokes, executive president of I.C.R.C., and indicated an interest on his part and that of Gary George, also a licensed practicing attorney, in providing legal services related to the scattered site housing project. Ultimately Sostarich's proposal was accepted by both I.C.R.C. and National Equity Fund, the financing equity partner of I.C.R.C. All fees paid with respect to Sostarich's, George's and Sostarich's law firms efforts with respect to this scattered site building project were paid at closing on the development project. Neither O.I.C. nor I.C.R.C. paid any of these fees.

In the fall of 1997 Sostarich and the Petitioner, on behalf of O.I.C. and its affiliates signed the first of a number annual retainer agreements. The agreements provided that Sostarich and lawyers he

assigned tasks to would provide legal services to O.I.C. and its affiliated entities for a fixed monthly retainer. In return for the retainer payments, Sostarich and those lawyers working with him would be available for 20 hours of work per month.

From October 1997 through 2003, O.I.C. contracted with the State of Wisconsin to provide services to citizens of the State who were in need of what historically has been referred to as "welfare". In Wisconsin a welfare reform initiative was commenced under the popular title W-2 (Wisconsin Works). This initiative replaced A.F.D.C. (Aid to Families with Dependent Children). At times germane to the alleged conspiracy, O.I.C. engaged in competitive bidding for contracts with the State of Wisconsin. O.I.C. would respond to state R.F.P.'s (Request for Proposals). The W-2 program was funded by the Federal Government (roughly 80%) and the State (roughly 20%).

As a recipient of the W-2 contracts, O.I.C. was required to establish an "allocation accounting system." This requirement was established by the Wisconsin Contract and was mandatorily consistent with the requirements set forth in Circular A-122 from the Office of Management and Budget of the federal government.

Attorney Sostarich never provided any legal services to O.I.C. related to the content of or performance of the W-2 contracts.

The retainer fees received by Sostarich were deposited in

Sostarich's personal checking account. They were not deposited in his firm's account. Sostarich would, after receipt of the O.I.C. retainer funds, write a "personal check" to Senator George for 80% of the amount received. On occasion Sostarich would provide this personal check to George or an aide of George even before depositing the monthly O.I.C. check. Sostarich would also write a check payable to his law firm for the remaining 20% of the retainer payment. Sostarich indicated that the 80/20 split was discussed with and approved by members of his law firm. Sostarich also received legal fees for work done beyond the terms of his retainer. He would follow a similar disbursal pattern with these funds, but the percentage splits were altered.

The government claimed and the Court of Appeals accepted the notion that "federal funds" were used by Petitioner to invest in a George family business. Atlantic Broadcasting Corporation was a Wisconsin corporation owned, on paper, by the family of Senator George. Its only asset was a television station in the Virgin Islands. The government presented evidence that O.I.A., a "for profit" entity affiliated with O.I.C. invested $200,000 in this corporation.

This investment was authorized by the O.I.A. Board of Directors after a presentation by Petitioner. The O.I.A. Board required, however, that the O.I.C. Board of Directors had to concur in the decision to invest. The O.I.C. Board did vote to authorize the investment.

The $200,000 invested came from money "earned" by O.I.C. as bonuses for having met and exceeded performance clauses within its state welfare contracts and from profit earned by "for profit" affiliates of O.I.C. The money was not state or federal money when invested; it had been earned. It was not money dedicated to or any part of a federal grant.

The investment was made with specific conditions attached. O.I.A. was to have a defined role on the Board of Directors of Atlantic Broadcasting Corporation and was to have a defined ownership interest in the company. The George family did not fulfill the promises made in return for the investment. Petitioner made several efforts to secure documentation and to force the George family to comply with the conditions attached to the investment. At the time of this prosecution, Petitioner was continuing his efforts to secure what was legally O.I.A.'s.

Sostarich's fees were in part ascribed to the State of Wisconsin W-2 Program as indirect costs. Such further facts are necessary for consideration of the issue raised in this Petition will be found in appropriate sections of the Argument.

ARGUMENT

Petitioner was convicted of a conspiracy, a violation of Title 18, U.S.C. §371. The United States or an agency thereof was the identified victim. In *United States v. Tanner*, 483 U.S. 107, 130, (1987)

this Court indicated that a violation of §371 was defined not only by the nature of the injury intended and the method used to effect the conspiracy but also, most importantly, by the target of the conspiracy.

In the instant case, the government's claim as to the nature of the injury intended by the alleged co-conspirators can fairly be described as the unlawful taking of money. The methods used to effectuate the conspiracy can be described as the splitting of legal fees by Attorney Sostarich and State Senator George and the investment of money in the George family business.

Legal Fee Splitting

The government presented detailed evidence establishing that upon receipt of monthly retainer checks from O.I.C., Sostarich deposited the checks in a personal account. He would then write a "personal check" payable to Gary George for eighty per cent of the amount received. On occasion he would provide the George check to George or an aide on George's Senate staff even before depositing the O.I.C. check. Sostarich would also write a check payable to Petrie & Stocking for the twenty per cent balance of the retainer. Sostarich testified that this 80/20 split was discussed with and approved by his law firm. When O.I.C. paid Sostarich for work done outside of the retainer he would follow a similar pattern, but the percentage splits were altered.

Sostarich's explanation for the overwhelming distribution to

George was that he and George agreed to the same. This agreement was based upon Sostarich's "understanding" of the meaning of a "retainer agreement." According to Sostarich, a retainer agreement simply assures that a lawyer is on call for a client. George, according to Sostarich, was on call for O.I.C. and was the "principal contact with the client." Exclusivity governs retainer agreements - not how much work you perform.

Because of the retainer agreements, Sostarich also felt it made sense to simply disregard I.R.S. 1099 forms received from O.I.C. related to the fees paid.

Television Station

Atlantic Broadcasting Corporation was a Wisconsin corporation owned by the family of Senator George. Its only asset was a television station in the Virgin Islands. The government presented evidence establishing that in June, 2000 a check in the amount of $30,000.00 was drawn on an O.I.C. account in favor of Atlantic Broadcasting Corporation. O.I.C. accounting records establish that the funds were "charged" for accounting purposes as an obligation of O.I.A. In January, 2001 a second check in the amount of $170,000.00 was provided by O.I.A. to American Broadcasting Corporation as the final payment of a $200,000.00 investment by O.I.A. in the television station.

The funds invested came from money "earned" by O.I.C. as

bonuses for having met and exceeded performance clauses within its State contracts and from profit earned by "for-profit" affiliates of O.I.C. The money was not State or federal money when invested.

While the government was not required to prove beyond a reasonable doubt the elements of either Title 18, U.S.C., §666 or Title 18, U.S.C., §§1341, 1343 and 1346, the government was obligated to prove beyond a reasonable doubt that Mr. Gee knowingly joined with others to commit these offenses with the United States as the intended victim.

Program Fraud - §666

One element of this offense requires that the State government or agency thereof "receiv[e], in any one year period, benefits in excess of $10,000 under a Federal program." The Indictment in this case alleges that the State of Wisconsin is such an "organization." Special Agent Gehring of the Internal Revenue Service produced an exhibit, Ex. 8, a letter from John Marx, Deputy Administrator of the Wisconsin Division of Energy, which established that O.I.C. had received $32 million dollars from the State of Wisconsin between 1997 and 2004. In each of those years, O.I.C. received in excess of $10,000 from federal programs. Howard Bernstein, general counsel for the State of Wisconsin, Department of Work Force Development, testified that the Department of Work Force Development was responsible for the administration of contracts related to W-2 (welfare) from the fall of

1997 through the present. He described the W-2 program as funded principally with federal money.

Title 18, United States Code, §666 in its sub-parts criminalizes the receipt of a bribe (§666(a)(1)(B)) and/or the offer of a bribe (§666(a)(2).

While the government's evidence established that O.I.C., in any one year period, received payments in excess of $10,000 pursuant to federal programs and Senator George obtained in excess of $5,000, the government's evidence did not establish that the Petitioner "corruptly" gave anything of value "with an intent to influence or reward" George in the performance of his legislative duties.

The awarding of welfare program contracts was a function of the Executive Branch of government - either the direct action of the governor or the granting of contract after responding to Requests for Proposals. George had no power or authority to influence; he did nothing to "merit" a reward.

The government presented evidence that Senator George sponsored a Credit Repair Bill as an adjunct to welfare reform. George's bill was not passed. It was later introduced in the legislature by other sponsors. While the bill was ultimately passed, it was never funded. The Petitioner testified that he and leaders of other welfare providing agencies had no warning Senator George was going to propose the Bill. The Petitioner did testify that Governor Thompson advised the

agency heads that he would not provide additional money to address credit repair. The contracting agencies had determined they would attempt to modify their budgets to address this particular need. They, and Gee in particular, did not ask George to introduce the bill. George's action was contrary to the interest of the agency. It potentially put the agency at odds with the governor. George's bill was most certainly not the subject of discussion with Gee and was not an activity meriting a *quid pro quo*.

The government also presented evidence that George and a member of his staff contacted individuals at the Department of Public Instruction as a consequence of O.I.C. not receiving payment for a meals program expeditiously. The meals program for low-income individuals and children was a reimbursement contract. O.I.C. was running in the red because D.P.I. wasn't paying. Inquiries were made by Mr. Rossmiller, a member of George's staff. Elected public officials are expected to assist constituents, but George and his staff did not achieve anything despite their efforts. The effort to resolve the problem was unsuccessful. It was unsuccessful even though the State's federal Senators were also contacted.

A bribe entails the notion that the briber will receive something in return. Gary George did not, according to the evidence, produce anything that benefitted O.I.C. As significantly, George and Sostarich determined who would receive what portion of the retainer. Sostarich

took the smallest share, but he produced legal work pursuant to the agreement. Defendant Gee did not act corruptly to influence or reward George.

Mail Fraud

The government alleged that the State of Wisconsin was defrauded of money, property and its citizens' right to honest services by virtue of Attorney Sostarich paying a percentage of the monthly retainer fee he received from O.I.C. to Senator George. The government further alleged that the Defendant was complicit in the scheme to transfer funds to George.

The evidence established that George, as an elected State official, was required by State law to disclose on an annual basis the source of funds received from employment outside of his senatorial duties and that he failed to disclose the payments he received from Sostarich. He also failed to disclose any ownership interest in the television station. The evidence established that the former senator failed in multiple ethical obligations. These ethical obligations were personal to the Senator. "Not every breach of every fiduciary duty works a criminal fraud." *United States v. George*, 477 F.2d 508, 512 (7th Cir. 1973). George gained, but his gains were not because of a conspiracy in which the Defendant participated. George operated in secrecy to the detriment of those he dealt with.

Sostarich testified that he never padded a bill to O.I.C., He

"earned" the money paid him by O.I.C. and its affiliates both by virtue of the retainer agreement and for other legal work not covered by the agreements, and there is no evidence of record to the contrary. The government did not "charge" Sostarich with any offense related to his actions related to O.I.C.

The total amount of legal fees paid Sostarich was accounted for on the books of O.I.C. and its affiliates. By virtue of an accounting system mandated by the federal government and in conformity with a "cost allocation formula" within the W-2 contract between O.I.C. and the State, Sostarich's fees were "assessed" on a percentage basis against O.I.C. and its affiliates. The State of Wisconsin, after learning of the investigation of George and his relationship with Sostarich as it related to O.I.C. and the Police Athletic League, demanded that O.I.C. "repay" approximately $215,000.00. This amount was calculated based upon a determination that roughly two-thirds of the O.I.C. budget in recent years had been from the W-2 program. The State claim was based upon an internal determination that "inadequate documentation" had been received in response to questions asked of O.I.C. This internal determination was finalized just before trial in this matter despite prior state audits and independent audits that found adequate documentation.

As noted above, Sostarich never claimed to have performed W-2 contract work, and the evidence does not establish that he was paid

for W-2 contract work. The government never presented any evidence that Sostarich performed any legal services in fulfillment of any W-2 contract. The evidence establishes that the federal government established a methodology to account for funds, the State contract contained a specific cost allocation plan and O.I.C. complied with both the federal and State requirements. There was no deprivation suffered by a victim. "Losses that occur as byproducts of a deceitful scheme do not satisfy the statutory requirement" of §§1341, 1343 or 1346. *United States v. Walters*, 997 F.2d 1219, 1227 (7th Cir. 1993).

Conspiracy

As described above, the O.I.A. investment in the television station was made with private funds, money earned by O.I.C. and its affiliates. The federal government retained no interest in the funds. The evidence at trial suggested no claim of ownership by the United States.

The money paid through Sostarich's account to George may by virtue of a government accounting system have originally come in part from federal funds, but Sostarich earned the money as a business transaction borne of a contract. The federal government was not the target of a scheme to defraud.

The Court of Appeals, in rejecting Petitioner's arguments, said, in part, that the Petitioner's argument "...supposes that §666 reaches

only funds that can be traced directly to the grant." the Court noted that this Court had "...rejected an identical argument in *Sabri v. United States*, 541 U.S. 600 (2004)," as the Seventh Circuit had in *United States v. Grossi*, 143, F. 3d 348 (7th Cir. 1998).

The issue presented herein is for how long does money, a fungible, remain federal money. In *Grossi* the Court, noting that money is fungible and that its effect transcended program boundaries indicated that the township treasury was able to spend more on welfare because the federal government satisfied some of its other expenses. In *Sabri* this Court held much the same. "Liquidity is not a financial term for nothing; money can be drained off here because a federal grant is pouring in there." *United States v. Sabri, supra*, 541 U.S. at 606.

Recognizing these decisions, it is respectfully submitted that the attenuation between the dollars paid to George by Sostarich and the investment dollars given by O.I.A. to Atlantic Broadcasting Corporation is so significant that any legitimate federal interest in prosecution as a victim had expired.

How far down the stream does the "federal interest" run." The O.I.A. investment money had been earned pursuant to the provisions of a contract with the State of Wisconsin. The monies were earned for extraordinary performance of a state contract. Sostarich legitimately performed the legal services for which he was retained. Any attribution of his fees to a federal source was occasioned only by the

mandated accounting program. O.I.C. earned more than sufficient money, unrelated to any federally funded program or any state funded program to pay Sostarich's fees. The federal government was not "victimized" by any of the actions alleged to have been undertaken by the Petitioner.

Conclusion

The Petitioner would respectfully request that this Court enter an Order granting a Writ of Certiorari.

Dated at Milwaukee, Wisconsin this 23rd day of March, 2006.

Respectfully Submitted,

Carl A. Gee

Petitioner

By:

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APPENDIX

7th Circuit Opinion ..... Pages A1-A6

District Court's Order Denying Rule 29
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Title 18 United States Code 371 and
United States Code 666..... Pages C1-C3

In the
United States Court of Appeals
For the Seventh Circuit

No. 05-1287
UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

CARL A. GEE,

Defendant-Appellant.

Appeal from the United States District Court
for the Eastern District of Wisconsin.
No. 03-CR-259-Rudolph T. Randa, *Chief Judge.*

ARGUED DECEMBER 7, 2005-DECIDED
DECEMBER 23,2005

Before EASTERBROOK, MANION, and SYKES, *Circuit Judges.*

EASTERBROOK, *Circuit Judge.* Opportunities Industrialization Center of Greater Milwaukee (OIC)-an organization affiliated with the self-help movement founded in 1964 by Rev. Leon H. Sullivan in Philadelphia-holds contracts to administer Wisconsin's welfare-reform program, popularly known as W-2 (for "Wisconsin Works"). These contracts bring in about $40 million annually, approximately two-thirds

of OIC's revenue. A jury concluded in this criminal prosecution that Carl Gee had conspired with Gary George and Mark Sostarich to obtain these contracts corruptly. Gee caused OIC to pay kickbacks to George, who at the time was the majority leader of Wisconsin's state senate. The kickbacks violated 18 V.S.C. §666 because OIC receives more than $10,000 annually in federal grants (*yV-2* is itself about 80% federal money), and the agreement among Gee, George, and Sostarich to violate §666 in turn violated 18 V.S.C. §371, the general conspiracy statute. Gee has been sentenced to 24 months' imprisonment and ordered to pay restitution of some $473,000. George pleaded guilty to the §371 charge, and we have affirmed his conviction and sentence of 48 months' imprisonment, though we directed the district court to revisit George's obligation to make restitution. See *United States v. George,* 403 F.3d 470 (7th Cir. 2005). Sostarich pleaded guilty to a different conspiracy with George, agreed to cooperate (he testified against Gee), and was sentenced to make restitution, serve home confinement but no imprisonment, and perform community service; he did not appeal.

The evidence permitted a jury to find that Gee caused OIC to pay George for his assistance in directing the welfare-program-management contracts to OIC and preventing the state from auditing OIC's performance. Money passed from OIC to George in two ways.

First, OIC gave Sostarich a monthly retainer, 80% of which he made over to George (often after one of George's aides picked up the check from OIC, delivered it to Sostarich, and waited while he made out a personal check to George for his cut). George never performed any legal work in exchange for this money; neither OIC nor Sostarich filed tax documents showing how the monthly fee had been divvied up. Second, OIC "invested" $200,000 of an affiliate's money in a corporation, controlled by George's family, whose sole asset was a TV station in the Virgin Islands. Although Gee told the affiliate that it would receive 20% of the corporation's stock, no certificates were issued and the "investment" never appeared on the corporation's books. The money seems to have gone straight to George's pocket, with OIC receiving his goodwill and political patronage rather than an equity interest in a business.

Gee contends that this evidence does not support the conviction. He offers three principal arguments. One is that the $200,000 came from orc's profits and bonuses for administering the W-2 program rather than from any federal grant. This argument supposes that §666 reaches only funds that can be traced directly to the grant. The Supreme Court rejected an identical argument in *Sabri v. United States*, 541 U.S. 600 (2004), as we had done earlier in *United States v. Grossi*,

143 F.3d 348 (7th Cir. 1998). Gee never mentions either of these decisions.

Another argument is that the evidence does not establish any specific act that George took in response to any specific payment. Gee contends that the absence of a *quid pro quo* prevents conviction. Yet the statute does not require any such link. A *quid pro quo* of money for a specific legislative act is *sufficient* to violate the statute, but it is not *necessary*. It is enough if someone "corruptly solicits or demands for the benefit of any person, or accepts or agrees to accept, anything of value from any person, intending to be influenced or rewarded in connection with any business, transaction, or series of transactions of such organization, government, or agency involving any thing of value of $5,000 or more". 18 D.S.C. §666(a)(I)(B). A sensible jury could conclude that George had this corrupt intent, and that Gee and Sostarich conspired with George to carry out a plan in which federal money in OIC's hands was exchanged for George's influence. See *United States v. Agostino,* 132 F.3d 1183, 1190 (7th Cir. 1997).

Finally, Gee observes that George was in the legislative rather than the executive branch of Wisconsin's government, which awarded W-2 contracts, and contends that he therefore "had no power or authority

to influence; he did nothing to 'merit' a reward." This confuses influence with power to act unilaterally. A legislator with the ability to control the senate's agenda can throw a monkey wrench into a Governor's program, and this power confers influence over executive decisions even when the legislature does not pass any particular law. The absence of new laws may show the successful application of influence. One does not need to live in Chicago to know that a job description is not a complete measure of clout. The evidence permitted a reasonable jury to find that George had plenty of clout and used it to Ole's benefit, for which he was well paid.

Gee does not contest the length of his prison sentence but does complain about the restitution. The principal problem that led to the remand in *George* was our inability to discern what the award represents. Here, as in *George*, the district judge failed to explain his decision; but this time it is easy to see where the numbers come from. The award equals $200,000 (the "investment" in George's business) plus 80% of Sostarich's retainer. That's exactly what the victim lost and thus is an appropriate award under 18 U.S.C. §3663A. Although *George* notes that the victim in a prosecution under §371 is the United States, OIC is a proxy for the federal interest because it was a recipient of federal funds that were

designated for a particular use. Restoring this money to OIC will enable it to carry out the federal and state welfare programs with the full resources that the contracts provided originally. Sostarich actually provided legal services, but he was willing to do this for only 20% of the retainer. Had funds not been diverted to George, OIC could have saved the difference. It is entitled to restitution of that difference, and its entitlement to a return of the $200,000 is straightforward.
AFFIRMED

A true Copy:
Teste:

Clerk of the United States Court of
Appeals for the Seventh Circuit

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA,

Plaintiff,

vs. Case No. 03-CR-259

CARL A. GEE,

Defendant.

ORDER

The defendant, Carl Gee ("Gee"), brings a motion for acquittal pursuant to Rule 29(a) and (c) of the Federal Rules of Criminal Procedure. Gee asks the Court to set aside the jury verdict of guilty with respect to Count 1 of the Superceding Indictment filed in this case.

Gee argues that the evidence advanced at trial was insufficient to support a finding of guilty beyond a reasonable doubt. Despite the recognition on Gee's part of the difficult hurdles he is required to overcome to achieve acquittal, Gee posits several positions that, according to Gee, require that result. Gee's arguments relative to his legal theories and their application to the evidence of

record are not enough to overcome the burden placed upon him. The Court agrees, in toto, with the reasoning and rationale offered by the government sustaining the jury verdict and adopts it here. Gee's motion for acquittal must be denied.

NOW THEREFORE BASED ON THE FOREGOING, IT IS HEREBY ORDERED THAT:

1.Gee's motion for acquittal is **DENIED**.

Dated at Milwaukee, Wisconsin this 15th day of October, 2004.

BY THE COURT

s/Rudolph T. Randa

Hon. Rudolph T. Randa
Chief Judge

§371. Conspiracy to commit offense or to defraud United States

If two or more persons conspire either to commit any offense against the United States, or to defraud the United States, or any agency thereof in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy, each shall be fined under this title or imprisoned not more than five years, or both.

If, however, the offense, the commission of which is the object of the conspiracy, is a misdemeanor only, the punishment for such conspiracy shall not exceed the maximum punishment provided for such misdemeanor.

§666. Theft or bribery concerning programs receiving Federal funds

(a) Whoever, if the circumstance described in subsection (b) of this section exists–

(1) being an agent of an organization, or of a State, local, or Indian tribal government, or any agency thereof–

(A) embezzles, steals, obtains by fraud, or otherwise without authority knowingly converts to the use of any person other than the rightful owner or intentionally misapplies, property that–

(i) is valued at $5,000 or more, and

(ii) is owned by, or is under the care, custody, or control of such organization, government, or agency; or

(B) corruptly solicits or demands for the benefit of any person, or accepts or agrees to accept, anything of value from any person, intending to be influenced or rewarded in connection with any business, transaction, or series of transactions of such organization, government, or agency involving anything of value of $5,000 or more; or

(2) corruptly gives, offers, or agrees to give anything of value to any person, with intent to influence or reward an agent of an organization or of a State, local or Indian tribal government, or any agency thereof, in connection with any business, transaction, or series of transactions of such organization, government, or agency involving anything of value of $5,000 or more;

shall be fined under this title, imprisoned not more than 10 years, or both.

(b) The circumstance referred to in subsection (a) of this section is that the organization, government, or agency receives, in any one year period, benefits in excess of $10,000 under a Federal program involving a grant, contract, subsidy, loan, guarantee, insurance, or other form of Federal assistance.

(c) This section does not apply to bona fide salary, wages, fees, or other compensation paid, or expenses paid or reimbursed, in the usual course of business.

(d) As used in this section–

(1) the term "agent means a person authorized to act on behalf of another person or a government and, in the case of an organization or government, includes a servant or employee, and a partner, director, officer, manager, and representative;

(2) the term "government agency" means a subdivision of the executive, legislative, judicial, or other branch of government, including a department, independent establishment, commission, administration, authority, board, and bureau, and a corporation or other legal entity established, and subject to control, by a government or governments for the execution of a governmental or intergovernmental program;

(3) the term "local" means of or pertaining to a political subdivision within a State;

(4) the term "State" includes a State of the United States, the District of Columbia, and any commonwealth, territory, or possession of the United States; and

(5) the term "in any one-year period" means a continuous period that commences no earlier than twelve months before the commission of the offense or that ends no later than twelve months after the commission of the offense. Such period may include time both before and after the commission of the offense.